

# HOUSE BILL No. 1508

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-7-4-709.

**Synopsis:** Performance bonds of land developers. Prohibits a unit of local government from adopting or enforcing an ordinance, rule, or other policy requiring a land developer of Class 1 or Class 2 structures to: (1) obtain a performance bond or other surety before the land developer receives secondary approval of a subdivision plat, with certain exceptions; (2) pay an availability fee before the recording of a secondary platting plan; or (3) obtain a maintenance bond that exceeds certain limits on the amount of the bond and on the effective period of the bond. Authorizes a unit of local government, upon the filing of a subdivision plat for secondary approval, to require the land developer to obtain a performance bond or other surety for incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, and erosion control that are in the approved development or required to service the approved development. Provides, however, that: (1) the ordinance, rule, or policy requiring a land developer to obtain a performance bond must provide for the timely release of the bond upon completion or substantial completion of the subject matter upon which the bond was obtained; and (2) the performance bond may not be based on a value that exceeds a certain limit and may not include land that is not then under development. Allows a land developer to delegate the duty to obtain a performance or maintenance bond for a specific parcel or lot to a subsequent possessor in interest who will make additional improvements to the parcel or lot before the parcel or lot is transferred to the final owner.

**Effective:** July 1, 2015.

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**VanNatter**

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January 20, 2015, read first time and referred to Committee on Government and Regulatory Reform.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1508

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 36-7-4-709, AS AMENDED BY P.L.126-2011,  
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]: Sec. 709. (a) Secondary approval under section 710 of  
4 this chapter may be granted to a plat for a subdivision in which the  
5 improvements and installments have not been completed as required  
6 by the subdivision control ordinance, if:  
7 (1) the applicant provides a bond, or other proof of financial  
8 responsibility as prescribed by the legislative body in the  
9 subdivision control ordinance, that:  
10 (A) is an amount determined by the plan commission or plat  
11 committee to be sufficient to complete the improvements and  
12 installations in compliance with the ordinance; and  
13 (B) provides surety satisfactory to the plan commission or plat  
14 committee; or  
15 (2) with respect to the installation or extension of water, sewer, or



1 other utility service:

2 (A) the applicant shows by written evidence that it has entered  
3 into a contract with the political subdivision or utility  
4 providing the service; and

5 (B) the plan commission or plat committee determines based  
6 on written evidence that the contract provides satisfactory  
7 assurance that the service will be installed or extended in  
8 compliance with the subdivision control ordinance.

9 (b) Any money received from a bond or otherwise shall be used only  
10 for making the improvements and installments for which the bond or  
11 other proof of financial responsibility was provided. This money may  
12 be used for these purposes without appropriation. The improvement or  
13 installation must conform to the standards provided for such  
14 improvements or installations by the municipality in which it is located,  
15 as well as the subdivision control ordinance.

16 (c) The plan commission shall, by rule, prescribe the procedure for  
17 determining whether all improvements and installations have been  
18 constructed and completed as required by the subdivision control  
19 ordinance. The rule must designate the person or persons responsible  
20 for making the determination.

21 **(d) As used in this section, "land developer" has the meaning set**  
22 **forth in IC 6-1.1-4-12(a).**

23 **(e) As used in this section, "under development" means a**  
24 **situation with respect to land in which a primary plat has been**  
25 **filed and approved and work has commenced to make substantive**  
26 **physical improvements to the land, excluding any work performed**  
27 **for the purpose of preparing the land.**

28 **(f) A local unit may not adopt or enforce an ordinance, rule, or**  
29 **other policy requiring a land developer of Class 1 or Class 2**  
30 **structures to do any of the following:**

31 **(1) Obtain a performance bond or other surety before the**  
32 **date on which the land developer receives secondary plat**  
33 **approval, except that a local unit may require the land**  
34 **developer to obtain a performance bond before secondary**  
35 **plat approval if the area under development is:**

36 **(A) within the existing public right-of-way; or**

37 **(B) related to erosion control.**

38 **(2) Pay an availability fee before recording a secondary**  
39 **platting plan.**

40 **(3) Obtain a maintenance bond that:**

41 **(A) amounts to more than ten percent (10%) of the actual**  
42 **cost to construct the bonded item;**



**(B) provides coverage for:**

- (i) landscaping items, such as trees and shrubs; or**
- (ii) sidewalks; or**

**(C) has an effective period greater than the following:**

- (i) One (1) year, except as provided in item (ii).**
- (ii) Three (3) years for common area streets.**

**(g) Upon filing of a plat for secondary approval, a local unit may require, before approval, that the land developer or the person delegated the land developer's duty, as provided in subsection (i), obtain a performance bond or other surety for any incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, and erosion control that:**

**(1) are:**

- (A) in the approved development; or**
- (B) required to service the approved development; and**

**(2) are included within:**

- (A) the legal description of the recorded plat; or**
- (B) a section in the legal description of the recorded plat; identified in the land developer's secondary plat filing.**

**(h) Any ordinance, rule, or policy requiring a land developer or a person delegated a land developer's duty to obtain a performance bond or other surety under subsection (g) shall include a provision for the timely release of the performance bond upon completion or substantial completion of the subject matter upon which the performance bond was obtained.**

**(i) A land developer may delegate its duty under subsection (g) to obtain a performance bond or maintenance bond for a specific parcel or lot to a subsequent possessor in interest who will make additional improvements to the parcel or lot before the transfer of ownership at closing of the parcel or lot, including all improvements to the parcel or lot, to the final owner. A local unit may not prohibit, restrict, or otherwise interfere with a land developer's right to delegate its duties as provided in this subsection.**

**(j) A performance bond or other surety requirement under subsection (f)(1) or subsection (g) may not:**

- (1) be based on a value that exceeds one hundred percent (100%) of the estimated cost (as provided by an engineer's estimate or, if an engineer's estimate is unavailable, by proof of a contract amount, when available and requested) to complete:**
  - (A) the portion of the area or improvement of the project;**



1                   **or**  
2                   **(B) designated section in the project;**  
3           **being bonded; or**  
4           **(2) include any land that is not under development at the time**  
5           **the bond or other surety is required, such as sections of**  
6           **adjacent or contiguous land that remain undeveloped, except**  
7           **to the extent that the land not then under development is used**  
8           **to access the site or provide utilities or other necessary**  
9           **services to the land that is under development.**

